



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**  
29 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-1370 FAX (603) 271-1381



December 8, 2003

Dale Gilpin  
Vice President, Corporate Real Estate  
Fidelity Investments  
One Spartan Way  
Merrimack, New Hampshire 03054

**CERTIFIED MAIL (7099 3400 0002 9773 5159)**  
**RETURN RECEIPT REQUESTED**

**NOTICE OF PAST VIOLATION**

Dear Mr. Gilpin:

On March 10, 2003, the New Hampshire Department of Environmental Services, Air Resources Division ("DES") conducted a compliance inspection of Fidelity Investments' facility located in Merrimack, NH ("Fidelity"). The purpose of the inspection was to determine Fidelity's compliance status with NH Administrative Rules Env-A 100 *et seq* and facility-wide permit FP-S-0001, which expired on September 30, 2001. On May 10, 2002, Fidelity's consultant, Vanasse Hangen Brustlin, Inc. ("VHB"), submitted an application to DES for a new facility-wide permit for Fidelity. The application identified several new diesel generators that had been installed and boilers that had been replaced without first informing DES or applying for permits. The purpose of this letter is to notify you of the violation(s) discovered during the March 10, 2003 inspection and subsequent file review, and to document those and other violations discovered by DES and that have since been corrected.

Background

On September 27, 1996, DES issued facility-wide permit FP-S-0001. The permit included the following eleven devices located at One Spartan Way: Cleaver Brooks boilers #1 and #2, a PBX generator, an emergency generator, a fire pump, six PV1 hot water heaters; and the following two devices located at Two Contra Way: an 8.3 MMBtu/hr Cleaver Brooks boiler and an emergency generator.

On February 2, 1999, DES issued general state permit GSP-EG-005 to Fidelity for six additional emergency generators located at One Spartan Way and Two Contra Way.

On February 4, 1999, DES issued an amended facility-wide permit FP-S-0001 to include a single No. 2 fuel-oil fired hot water heater which replaced the six PV1 hot water heaters located at One Spartan Way. The amended permit also included a 12.53 MMBtu/hr York Shipley boiler located at Two Contra Way which had previously been permitted under state permit to operate PO-B-1553, issued by DES on January 14, 1997.

On April 8, 1999, DES issued an amended general state permit GSP-EG-005 to include a seventh emergency generator.

On July 13, 1999, DES issued a re-amended facility-wide permit FP-S-0001 which included the nine devices covered by the February 4, 1999 amendment to the permit and the seven emergency generators previously permitted under the April 8, 1999 amendment of general state permit GSP-EG-005. The re-amended facility-wide permit FP-S-0001 expired on September 30, 2001.

DES received an application dated May 10, 2002 from VHB to renew the permit. The application included 3 emergency generators that Fidelity had installed in August 1996, October 2000 and November 2001, respectively, without first submitting applications for permits. The application also included two 8.2 MMBtu/hour Cleaver Brooks boilers that Fidelity installed at Two Contra Way in October 2001 to replace the Cleaver Brooks and York Shipley boilers permitted under facility-wide permit FP-S-0001. The replacement of the permitted boilers was done without first notifying DES or submitting an application for an amendment to facility-wide permit FP-S-0001.

Condition VIII.C of facility-wide permit FP-S-0001, and Env-A 901.07 (effective 11-15-92) and Env-A 907.01 (effective 4-23-99), require Fidelity to maintain monthly records of the fuel oil consumption and operating hours of the devices listed in the permit and to report this data annually to DES by April 15 of the following year. Condition IX.F of the permit, and Env-A 704.01 require submittal of an emission-based fee for the same devices by October 15 of following calendar year.

Condition XI.D of general state permit GSP-EG-005, and Env-A 901.07 (effective 11-15-92) and Env-A 907.01 (effective 4-23-99), require Fidelity to maintain records of the monthly hours of operation and fuel consumption for each of the emergency generators and to report this information to DES by April 15 of the following year. Condition X.E of the permit, and Env-A 704.01, require Fidelity to submit an emission-based fee for the emergency generators by October 15 of following calendar year.

Fidelity did not submit annual emissions reports for any of the devices located at the facility for calendar years 1997 through 2001. The annual emissions data for these years was included with the annual emissions report for calendar year 2002, submitted to DES on April 10, 2003 by Jones Lang LaSalle Americas, Inc. ("Jones, Lang, LaSalle"), on behalf of Fidelity as the facilities services operator. Fidelity did not submit any emission-based fees for calendar years 1997 through 2001. The emission-based fees for these years were included with the emission-based fee for calendar year 2002, submitted by Jones Lang LaSalle to DES as a check in the amount of \$3,965.19 on April 10, 2003.

#### Violations

Based upon the information above, DES has identified the following violations:

1. Fidelity failed to submit a renewal application for facility-wide permit FP-S-0001 at least 90 days prior to the expiration date of the permit (July 2, 2001) as required by Env-A 608.10(a);
2. Fidelity failed to comply with Env-A 608.01 by operating without a state permit from the expiration date of facility-wide permit FP-S-0001 (September 30, 2001), until submittal of the application to DES on May 10, 2002;
3. Fidelity failed to apply for a temporary permit or for an amendment to general state permit GSP-EG-005 prior to installing and operating 3 new emergency generators, as required by Env-A 607.01(d) and Env-A 610;
4. Fidelity failed to notify DES prior to replacing the permitted Cleaver Brooks boiler and York Shipley boiler with two new boilers, as required by Env-A 612.03;

5. Fidelity did not submit the annual reports for calendar years 1997 through 2001 of fuel usage and hours of operation that were required to be reported to DES by April 15 of each following calendar year, in accordance with Condition VIII.C of facility-wide permit FP-S-0001, Condition XI.D of general state permit GSP-EG-005, and Env-A 901.07 (effective 11-15-92) and Env-A 907.01 (effective 4-23-99).

6. Fidelity did not submit the emission-based fees for calendar years 1997 through 2001 that were required to be submitted to DES by October 15 of each following calendar year, in accordance with Condition IX.F of facility-wide permit FP-S-0001, Condition X.E of general state permit GSP-EG-005, and Env-A 704.01.

The submittal on May 10, 2002 of the application for a State Permit to Operate by VHB, on behalf of Fidelity, and the submittal on April 10, 2003 of the annual emissions data and emissions-based fees for calendar years 1999 through 2002 by Jones Lang LaSalle, address the violations noted in this Notice of Past Violation.

DES believes that no further action in response to the listed violations is required. DES requests that Fidelity comply with all applicable requirements of NH Administrative Rules Env-A 100 *et seq*, and all future reporting and fee payment obligations contained in its permit(s). Should additional violations occur in the future and DES determines that enforcement action is necessary, such action may include issuing an administrative order, seeking administrative fines, and/or referring this matter to the New Hampshire Department of Justice for civil and/or criminal penalties.

If you believe that DES has cited these violations in error, or have questions regarding these matters, please contact Ray Walters at the Compliance Bureau, Air Resources Division, at (603) 271-6288. A current copy of the Air Resource Division rules can be obtained from the DES website at <http://www.des.state.nh.us/ard/ardrules.htm>, or by contacting the Public Information Center at (603) 271-2975.

Sincerely,

**COPY** 

Pamela G. Monroe  
Administrator  
Compliance Bureau

PGM/raw

cc: M. Harbaugh, DES Legal Unit  
R. Hinch, Chairman of Selectmen, Town of Merrimack  
File AFS# 3301100143